

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES M. ICARD,

Plaintiff(s),

No. C 13-05097 PJH

v.

**ORDER GRANTING LEAVE TO FILE
THIRD AMENDED COMPLAINT**

ECOLAB, INC.,

Defendant(s).

The motion of plaintiffs for leave to file a Third Amended Complaint came on for hearing before this court on March 26, 2014. Plaintiffs appeared by their counsel Brian Hefelfinger and defendant Ecolab appeared by its counsel Peter Maretz and Arch Stokes. Having read the parties' papers and carefully considered their arguments and relevant legal authority, the court hereby GRANTS the motion for the reasons stated at the hearing and as follows.

Plaintiffs seek leave to amend to add a claim under California's Private Attorneys General Act ("PAGA"). Plaintiffs point out that, while this case was proceeding in state court (before removal), former class representative Icard was deemed inadequate to serve as class representative, and the state court ordered plaintiffs' counsel to find a new class representative. On August 20, 2013, the state court granted a motion to substitute plaintiffs Matthew Ross and Robert Magee as class representatives. On October 2, 2013, Magee gave notice to California's Labor and Workforce Development Agency as a prerequisite to asserting a claim under PAGA.

The court finds this case analogous to Mazzei v. Regal Entm't Grp., 2013 WL 6633079 (C.D. Cal. Dec. 13, 2013) (Carter, J.). Like Mazzei, this case involves an original

1 plaintiff who is time-barred from initiating a PAGA claim, and a later-added named plaintiff
2 whose PAGA claim is not time-barred. Id. Because a subsequent named plaintiff timely
3 filed his notice, his claim is not time-barred; however, because the original plaintiff failed to
4 initiate the administrative condition precedent to a PAGA claim, the amendment cannot
5 relate back to the original complaint. Thus, the PAGA claim will be allowed to go forward,
6 but the accrual of PAGA penalties will be tethered to the date of Magee's administrative
7 exhaustion on October 2, 2013 rather than the date of the original complaint's filing.
8 Whether the PAGA penalties will accrue beginning at the date of administrative exhaustion
9 or one year prior under the one year statute of limitations provided by California Code of
10 Civil Procedure § 340 is an issue that can be addressed by the parties at a later date.

11 In accordance with the foregoing, plaintiffs' motion for leave to amend is GRANTED.
12 Plaintiffs shall file their Third Amended Complaint by April 7, 2014. The caption of the Third
13 Amended Complaint shall bear the names of the newly-substituted plaintiffs, Ross and
14 Magee. Defendant will have until April 28, 2014 to answer or otherwise respond to
15 plaintiffs' Third Amended Complaint.

16 **IT IS SO ORDERED.**

17 Dated: April 2, 2014


18 PHYLIS J. HAMILTON
19 United States District Judge

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